

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 09 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ARTHUR DUANE JACKSON,

Plaintiff - Appellant,

v.

JOHN A. CLARK, Clerk of the Superior
Court; et al.,

Defendants - Appellees.

No. 04-55032

D.C. No. CV-02-02698-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted May 5, 2006**
Pasadena, California

Before: D.W. NELSON, HAWKINS, and PAEZ, Circuit Judges.

Arthur Duane Jackson (“Jackson”), convicted in state court of carjacking and attempted murder, appeals pro se the district court’s *sua sponte* dismissal of his 42

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 action. Jackson seeks to compel the defendants to provide him with, or account for, various evidence pertaining to his state conviction. Based on intervening authority not available to the district court when it dismissed, we reverse and remand.

The district court determined that Jackson's action was barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), concluding that providing Jackson with allegedly withheld evidence would "necessarily imply the invalidity" of his state court conviction. *Heck*, 512 U.S. at 487. An intervening decision, however, held that *Heck* does not preclude a § 1983 action seeking to compel the state to release certain evidence because success would only yield access to evidence, which, in and of itself, "would not 'necessarily demonstrate the invalidity of confinement'" *Osborne v. District Attorney's Office for the Third Judicial District*, 423 F.3d 1050, 1054 (9th Cir. 2005) (quoting *Wilkinson v. Dotson*, 125 S. Ct. 1242, 1248 (2005)). Because Jackson, much like the prisoner in *Osborne*, only seeks the release, or accounting, of potentially exculpatory evidence, success on the merits would not necessarily imply the invalidity of his conviction.

Accordingly, we reverse the district court and remand for further proceedings. We express no opinion as to whether Jackson has been deprived of a federally

protected right or whether his claim is barred on other grounds, leaving those questions for the district court to address in the first instance.

REVERSED and REMANDED.